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IN THE

Supreme Court of the United States

October Term, 1956

No. 625

VIRIKS REDERI A/S (Haldor Virik, Manager), as owner of the T/S SANDEFJORD,

Petitioner,

against

POLARUS STEAMSHIP CO., INC., as owner of T/S POLARUSOIL,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MacDonald Deming,
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of Counsel.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Viriks Rederi A/S (Haldor Virik, Manager) prays that a writ of certiorari issue to review so much of the judgment of the United States Court of Appeals for the Second Circuit entered in the above-entitled case on August 20, 1956 and adhered to by order filed September 17, 1956, denying timely petition for rehearing as affirmed the decree of the United States District Court for the Southern District of New York that Polarus Steamship Co., Inc., recover of and from the t/s SANDEFJORD and Viriks Rederi A/S (Haldor Virik, Manager) its damages, with interest and costs, and that the cross-libel of Viriks Rederi A/S (Haldor Virik, Manager) be dismissed with costs.

Citations to Opinions Below

The unreported Opinion of the United States District Court for the Southern District of New York is printed in Appendix A, p. 9. The unreported Interlocutory Decree of the District Court is printed in Appendix A, p. 25. The

Opinion of the Court of Appeals, printed in Appendix A, p. 27, is reported in 236 F. (2d) 270, 1956 A. M. C. 1779. The unreported Judgments of the Court of Appeals are printed in Appendix A, p. 32. The unreported Opinion and Order of the Court of Appeals denying the petition for rehearing are printed in Appendix A, pps. 34, 35.

Jurisdiction

The Opinion of the United States Court of Appeals for the Second Circuit was handed down August 20, 1956 and Judgment was entered on the same day (Appendix A, pp. 27, 32). Timely petition to the Court of Appeals for rehearing, filed on August 31, 1956, was denied by an Order filed September 17, 1956 (Appendix A, p. 35). The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

Question Presented

Whether the Court below erred as a matter of law in failing to hold that the Polarusoil was traveling at an immoderate speed in proceeding in a highly traveled lane in dense fog, with visibility of about a shiplength, at her half speed of 6 knots, although her slow speed of about 3 knots was ample for steerageway.

Statutes Involved

The case involves Article 16 of the International Rules, 33 U. S. C., § 92(a) which provides:

> "(a) Every vessel, or seaplane when taxi-ing on the water, shall, in fog, mist, falling snow, heavy rainstorms or any other condition similarly restricting visibility, go at a moderate speed, having careful regard to the existing circumstances and conditions."

Statement of the Case

The t/s POLARUSOIL, owned by respondent Polarus Steamship Co., Inc., bound from New York to Orange, Texas, collided with the t/s SANDEFJORD, owned by petitioner Viriks Rederi A/S (Haldor Virik, Manager), bound from Philadelphia to New York, south of Barnegat Lightvessel off the New Jersey coast in the early morning of July 11, 1951.

Trial on the merits of the libel and cross-libel was held in the United States District Court for the Southern District of New York on October 3 and 4, 1955, and at the conclusion of the trial an interlocutory decree was entered dismissing the cross-libel of Viriks Rederi A/S (Haldor Virik, Manager) and awarding to Polarus Steamship Co., Inc., its damages arising from the collision. The Trial Court, in its Opinion and Findings of Fact, established that the collision occurred "in a highly travelled lane" (Opinion of the District Court, Appendix A, p. 14), with visibility in the dense fog "somewhere about a ship's length" (Opinion of the District Court, Appendix A, p. 18; Finding 7, Appendix A, p. 21); that the POLARUSOIL was proceeding at half speed of 6 knots and that her slow speed of slightly more than 3 knots was ample for steerageway (Findings 1 and 6, Appendix A, p. 20).

On December 2, 1955, the interlocutory decree of the District Court holding the SANDEFJORD solely to blame was entered. Viriks Rederi A/S (Haldor Virik, Manager) filed notices of appeal in the cross-suits, in the United States Court of Appeals, Second Circuit, from so much of this decree as held the t/s POLARUSOIL free from blame. The Court of Appeals had jurisdiction under 28 U. S. C. §§ 1291, 1292 (3).

The Court of Appeals affirmed the Trial Court and subsequently denied timely motion for rehearing. The Court of Appeals affirmed the District Court's holding that the

POLARUSOIL was proceeding at moderate speed. The Court of Appeals stated that the moderate speed requirement of the Rules is met when a vessel is proceeding "only at such speed that it can stop before striking another vessel which comes into the range of its vision" (Opinion, Court of Appeals, Appendix A, p. 31).

Reasons Why Certiorari Should Be Granted

The holding of the court below that the moderate speed in fog requirement of Article 16 of the International Rules (33 U. S. C. § 92(a)) means that a vessel may "proceed only at such speed that it can stop before striking another vessel which comes into the range of its vision", i. e., be stopped at the time of collision, is in direct conflict with the rule laid down by this court in the *Pennsylvania*, 86 U. S. 125, and the *Martello*, 153 U. S. 64: in frequented paths of commerce, as in the case at bar, vessels in dense fog are required by the Rule to reduce speed to the lowest point consistent with good steerageway, a requirement which the POLARUSOIL concededly ignored.

Further, the interpretation of the Rule by the Court below was specifically rejected by the United States Court of Appeals for the First Circuit in *The Pemaquid*, 288 Fed. 666, and by the United States Court of Appeals for the Ninth Circuit in *The Silver Palm*, 94 F. (2d) 754.

It is undisputed that the POLARUSOIL, although requiring only slightly more than 3-knots speed to maintain ample steerageway, was navigating at 6 knots in dense fog on the route of vessels navigating between New York and United States East Coast and Gulf Coast ports. The POLARUSOIL was in collision with one such vessel, but her speed was nevertheless held by the District Judge to have been moderate.

The Court of Appeals accepted the District Judge's holding of moderate speed on the part of the POLARUSOIL, citing the decision of the United States District Court for the District of Maine in *The Pemaquid,* 255 Fed. 709, and stated that the moderate speed requirement had been fulfilled because "here the POLARUSOIL was 'stopped in the water and probably going astern very slowly at the time of the collision' " (Opinion, Court of Appeals, Appendix A, p. 31).

However, as noted by the Court below in its citation of *The Pemaquid,* the United States Court of Appeals for the First Circuit reversed on the facts, 288 Fed. 666, and that Court also *rejected* the reasoning of the District Court that if the vessel was moving astern through the water at the time of the collision, she ought not to be held in fault for her earlier speed. The Court of Appeals disagreed with this view (288 Fed. at p. 669):

> "Whether she had overcome her headway and started astern at the time of the collision or not, she evidently had not been able to overcome her headway before she reached the point at which the courses of the steamers intersected, for the evidence shows that she had reached that point and that the collision occurred there while she was advancing or backing."

The same reasoning was rejected by the United States Court of Appeals for the Ninth Circuit in *The Silver Palm,* 94 F. (2d) 754, 763:

> "There is some confusion in the argument of the Chicago regarding the method of determining whether a vessel is maintaining a moderate speed in a fog. Great stress is laid on whether or not the Chicago was dead in the water prior to the collision.

> On the evidence we hold, with the admission of her libel (App. 16), that she had considerable forward motion in her. However, *she could well be dead in the water and still at fault* if she had crossed more than her allowable portion of visibility." (Italics supplied.)

In a case involving the failure of a vessel to stop on first hearing a fog signal forward of the beam, *Lie* v. *San Francisco & Portland S. S. Co.*, 243 U. S. 291, 298, this Court rejected similar reasoning:

> "It is of no avail for this master to say that at the instant of the accident he thinks the momentum of his ship had been overcome, and that she was commencing to move backward in response to the 'full speed astern' order, which had been given during the instant that had elapsed between the appearance of the 'Beaver' through the fog and the coming of the ships together, for the evil had been done and the collision rendered inevitable."

The Court below, too, in *Johnston-Warren Lines* v. *U. S.*, 196 F. (2d) 689, 691, rejected such reasoning:

> "It is true that the Longview was able to stop before she ran into the Jessmore and was dead in the water when the collision occurred, and that the Jessmore, on the other hand, could not have stopped her headway in time even if she had tried on first sighting the Longview. But this fact does not excuse the Longview's failure to reverse her engines on first sighting the Jessmore, or her misleading signals proposing a port crossing when actually she was engaged in an attempt to make a starboard passing."

We submit that under the foregoing decisions the interpretation of Article 16 suggested by the Court below has

been disapproved by this Court and by the Courts of Appeals for the First and Ninth Circuits.

The proper rule is, we submit, that expressed in *The Martello* and *The Pennsylvania,* cited in the Opinion of the Court below (Appendix A, p. 30): bare steerageway in dense fog in frequented paths of commerce. The leading text on collision law states unequivocally: " * * * if the fog is very dense, a vessel's speed, at least in waters where any traffic is to be expected, should not exceed bare steerageway." (Griffin on Collision, p. 301.)

The POLARUSOIL, which had no radar, was navigating in very dense fog (visibility about one shiplength) at a speed, 6 knots, twice that necessary to maintain steerageway. The *Martello* case (153 U. S. at p. 70) condemned a 6-knot speed in dense fog as excessive for a vessel traveling "the frequented paths of commerce."

The District Court specifically noted in its opinion that this collision occurred "in a highly travelled lane" (Appendix A, p. 14), and the Court below characterized the area of the collision as "in the travelled highway" (Appendix R, p. 28). In *The Pennsylvania,* a collision 200 miles east of Sandy Hook (the collision at bar was approximately 50 miles south of Sandy Hook) was found by this Court to be "in the track of outward and inward bound vessels * * * along a route so much frequented" (86 U. S. at pp. 133-134). The Court below has held in *The Cherokee,* 45 F. (2d) 150, 151, that a vessel in collision 1½ miles off Barnegat (about 10 miles north of the collision at bar) was "In the track of vessels bound north and south, she was burdened with the expectancy of meeting passing craft," citing *The Martello.* Sixty miles to the south, at Five Fathom Bank, has been held "one of the most frequented parts of the Atlantic Coast" where a vessel is "momentarily liable to find vessels directly in her way," *The Pottsville,* 12 Fed. 631, 632 (E. D. Pa.).

The POLARUSOIL was clearly in a much frequented path of commerce and was therefore as a matter of law according to the rule laid down by this Court in *The Pennsylvania* and *The Martello*, navigating at immoderate speed by travelling in dense fog at a speed twice that required for bare steerageway. We submit that on the undisputed facts the Courts below had no choice under this Court's interpretation of Article 16 but to condemn the POLARUSOIL for her speed.

CONCLUSION

It is respectfully submitted that the foregoing considerations warrant allowance of the writ sought by petitioner.

Dated: New York, N. Y.,

Respectfully submitted,

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APPENDIX A

OPINIONS AND JUDGMENTS BELOW

Opinion of Trial Court

(Also printed at page 220a of the certified record submitted herewith, hereinafter referred to as "R".)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

AD. 169-153

—o—

POLARUS STEAMSHIP CO., INC., as owner of the T/S POLARUSOIL,

Libelant,

against

The T/S SANDEFJORD, her engines, boilers, etc., and VIRIKS REDERI A/S (Haldor Virik, Manager),

Respondents.

AD. 182-237

VIRIKS REDERI A/S (Haldor Virik, Manager), as owner of the T/S SANDEFJORD,

Cross-Libelant,

against

T/S POLARUSOIL, her engines, boilers, etc., and POLARUS STEAMSHIP CO., INC.,

Cross-Respondent.

—o—

Appendix A

APPEARANCES:

DOW & SYMMERS, Esqs., Proctors for Libelant; WILBUR E. DOW, JR., Esq., and WILLIAM A. WILSON, Esq., of Counsel.

HAIGHT, GARDNER, POOR & HAVENS, Esqs., Proctors for Respondent; MACDONALD DEMING, Esq., and GORDON W. PAULSEN, Esq., of Counsel.

OPINION (Oral)

WALSH, *J.*:

The Court: I think, even though my views may be a little bit rambling, it is better I dispose of this case while it is fresh in my mind.

At the outset, I would like to thank both of you for the very fine presentation that you have given me. Every time I have the pleasure of trying an admiralty case, I am impressed; and this one was particularly impressive because of the economy of the Court's time and the apparent economy of your own effort, which is very deceiving. It means a tremendous amount of effort has gone into it to minimize the actual use of the time in court.

It has been a great pleasure for me to hear you both, but in most lawsuits you cannot decide in favor of both counsel.

I am going to give a decree to the Polarusoil. The fault of the Sandefjord has been conceded, and I think quite properly so, because it seemed to me quite obvious. I am going to find Polarusoil free from fault.

There is, I think, a temptation in a trial to reach for a precision which is not always available, and I think that the realistic picture to keep in mind here is of both ships navigating in a fog which is not a constant factor but something which is changing from second to second and from minute to minute. An attempt to establish precision as to time and estimates of visibility, I think, probably would end in a misleading picture.

Appendix A

We have the masters and mates and engineers on the two ships who were both at the moment far more preoccupied with trying to save their vessels than they were in making accurate notations of what was going on, and I say this with the greatest respect for the discipline with which they act and their recognition of their duty to try to keep as accurate notes as they could.

I am further very much impressed by the fact that one ship was apparently under control; the other ship, apparently, was not.

We can sit here and by very highly skilled post mortems, which I believe have been conducted by both sides, attempt to calculate with nicety how far everybody could see, and how far it took to stop the ships, but the fact, I think, was that when the thing was occurring, the master of the Polarusoil had his ship dead in the water or, I think, probably going astern when he was hit, and the other master did not; he ran into the Polarusoil.

Under these circumstances, we will go back and look at the Polarusoil's conduct in the light of the rules applicable.

The first question that occurred to me, and I think the most serious one, is, did she stop when she heard the fog signals of the Sandefjord. The Sandefjord, of course, admits that she did not. The crew of the Polarusoil claims that she did. The testimony of the crew of the Polarusoil is consistent with everybody from the lookout to the master. There is no conflicting testimony by the Sandefjord.

The only question we have is whether certain circumstances are so inconsistent with the testimony of the crew of the Polarusoil that I should disbelieve their testimony.

There were two matters which gave me some concern. First of all, the Sandefjord claims that she heard the Polarusoil's fog signals, I think, for 15 to 18 minutes before the collision. You cannot help but wonder how she could hear the signals so long before the Polarusoil heard the Sandefjord.

I don't think that such a wonder or such a speculation is enough to lead me to disbelieve the testimony of these witnesses whose demeanor on the stand impressed me very favorably. The fact is, in fog, sound sometimes does strange things, and in the absence of any conflicting testimony, I will continue to believe the testimony that was given by the Polarusoil crew.

The second thing that bothered me was the impression that I got from the testimony of the master and the second mate that more than two minutes elapsed between the two signals of the Sandefjord that they actually did hear. I got the impression that they thought that there was an awfully long time in there and they were wishing the Sandefjord would give them another blast so they would know a little better where she was and, of course, this seems inconsistent with the notations in the log because both the master and the mate said when they heard the first whistle, they stopped the engines, and when they heard the second fog signal, it was almost simultaneously with seeing the Sandefjord and they put the Polarusoil's engines full astern. And yet there is only a two-minute interval in the decklog between these two entries and only half a minute interval in the engine room log. Well, I think there are sufficient good, honest explanations for that, so I will continue to believe the testimony of the witnesses as they gave it here. First, I have no doubt that the interval to them, standing on the bridge, when they heard that fog signal so close at hand seemed far greater than it actually was. And, second, I will repeat what I have already said: I think that all concerned were much more interested in what they were doing to save the ship than in the records they were making of what they were doing, and I will take and put first importance on the order of events as they remembered them and seemed honestly to testify to them here in court.

Appendix A

There is a double discrepancy in the decklog and the engine room log. The engine room log has the stop engines signal later than the decklog and yet it has the full astern signal earlier, and I think we cannot, again, speculate with too much nicety that the engine room log must be correct because they had better light down there, and a bigger clock, and a second hand. All we know is that there is a difference between the two and that both the engineer and the mate, who made those entries, were acting quickly and under great stress in order to save the ship. So I will find that, as the master and the mate of the Polarusoil testified, she stopped her engines upon hearing the fog signal of the Sandefjord.

As to whether the speed of the Polarusoil was excessive again our only testimony is that of the Polarusoil's crew, who all fixed the speed at 5½ knots. I will make it 6 knots, just allowing, perhaps, a half a knot as the natural error in recollection of something that happened. You might err that much in your own favor. So I am going to conclude from the testimony that I have that her speed did not exceed 6 knots.

Again, I recognize the skill with which counsel for the Sandefjord has raised questions as to these facts where they seem so singularly dependent upon the testimony of hostile witnesses but, again, where I have direct testimony of men who appear to be telling the truth, I am not going to set it aside and believe something to the contrary simply on what I regard as fairly speculative evidence.

If there were a conflict in testimony, these facts that counsel for the Sandefjord has raised might help in deciding between two conflicting sets of witnesses, but where the testimony is not in conflict and the circumstances are consistent with it, I will believe the testimony; and certainly, just on the speculation that she might have been travelling at 8 knots, we cannot conclude as a fact that she did. It is

not just a matter of casting doubt on the witnesses of the Polarusoil. The Sandefjord here would have the burden of establishing a speed and there is no basis for concluding that, I think, the speed was other than that testified by the Polarusoil crew.

The cases which the Sandefjord relies on as to speed in a fog, the Goldshell-White Plains case, 1955 AMC 985, and also the Mirabello, which was referred to here on argument, were both accidents which occurred right in New York Harbor. The Goldshell case occurred in the North River right off Pier 22. And the duty to reduce your speed to a bare steerageway in the harbor of a city is quite different from the duty 43 miles out to sea, where you are in the open sea, although in a highly travelled lane.

There is a duty to keep a moderate speed in a fog, and a moderate speed is a speed which you fix upon the presumption that the other ships in the fog are going to do the right thing and that they will stop on hearing your fog signal if it is forward of the beam and that they will reverse on seeing you. And I don't think that the speed here was immoderate. I think it was moderate.

Taking into account that the engine room had been ordered to stand by, that they were ready to reverse; that there was no sea or wind to interfere with maneuvers; that the ship was so trimmed that she would have more backing power than usual; I think, under all those circumstances, I am not going to say that the Polarusoil was at fault.

As to the actual collision itself, I have said I think that the Polarusoil was stopped and even going astern. First of all, it was the testimony of her crew that she was virtually stopped.

Incidentally, I want to add one note here out of order. This relates to her stopping on hearing the fog signal. The testimony of the lookout completely supports that of the

officers of the Polarusoil. He heard only two fog signals and he signalled for both of them. And this I just add out of order in support of the conclusion that even though the Sandefjord heard the Polarusoil several minutes earlier that the Polarusoil did not in fact hear the Sandefjord.

Coming back to the actual impact, it is the testimony of all the Polarusoil crew that she was dead in the water or going astern slowly. There is no contradiction by anybody on the Sandefjord.

Mr. Lewis' testimony I have covered in my general view of the value to be put upon nice estimates of speed under the circumstances, and I am not going to give it controlling weight here. I am disturbed by possible differences in the ships involved from the ship whose trial runs furnished the basis for his conclusion. And, again, I have the testimony of several witnesses—of three witnesses who testified here and the depositions of the others—which, apparently, is completely believable. They were there, they tell me what happened, and I see no reason for speculating on something else which might have happened where there is no basis whatsoever that was developed here for disbelieving them.

The actions of the vessels themselves move me in favor of the Polarusoil. It seemed odd to me that if the Polarusoil had any way on her, any forward way, that the Sandefjord would not swing away from her when she hit. Instead of that, you have the Sandefjord, in a sense, dragged after the Polarusoil. When the Sandefjord hit the Polarusoil, she apparently withdrew her bow cleanly; didn't scrape. Then her bow, instead of swinging away from the Polarusoil, swung toward it. In fact, she swung so rapidly in the direction of the Polarusoil that her stern nearly collided with the Polarusoil's bow.

And then we have the evidence of the naval architect who testified this morning, Mr. Pickering, that there were no marks showing any scraping along the vessel, which he would have expected if the Polarusoil had way on her, and his testimony that, from the appearance of the damage, that the Polarusoil didn't have way or little way, if any.

With respect to maneuvers at the time, insofar as the Polarusoil was given left rudder at the same time she went astern, again I see no fault there. It was the testimony of the helmsman that she didn't swing to port until she was hit. In other words, that the maneuver was executed exactly as the master says he planned it to be. In other words, the left rudder compensated for any swerving effect that the reversing of the engines would have, and that she was on her course until hit and then swung, I believe, 10 or 13 degrees to port. At that time the Sandefjord had right rudder which, again, would seem to me, if the Polarusoil had any forwardway, the right rudder of the Sandefjord would accentuate its effect and she would swing all the more from the Polarusoil whereas, in spite of her own right rudder, she went off, her bow swung to port towards the Polarusoil, and the speed with which it swung makes it doubtful to me that it was due to the reversing action of the Sandefjord's engines.

That is about all that I am going to say on this unless someone wants me to say something more specific now before you submit your own proposed findings.

I think that the Polarusoil stopped her engines when she heard the first fog signal of the Sandefjord. I don't think her speed up to that point had been excessive. And, finally, I think that even if there was any excessive speed up to that point that in fact she was stopped in the water and probably going astern very slowly at the time of the collision; that regardless of how it came about or when she stopped her engines or when she reversed them, if the

Sandefjord had been obeying the law as the Polarusoil had every reason to expect her to do, there would have been no collision.

Mr. Dow: Does your Honor wish to say anything about the lookouts?

The Court: I will find that the lookout on the Sandefjord was on the bridge. I don't really see how that contributed to the accident. And, parenthetically, with all those estimates of visibility we had, I think there was a general overlooking of the fact that there was a foredeck to be added to the distance between ships in figuring the length or amount of visibility.

The reason I don't make any conclusion on the failure to have a bow lookout on the Sandefjord contributed to the accident is that the lookout on the Polarusoil didn't see or hear the Sandefjord any sooner than the people did on the bridge.

I don't get any feeling that this was a sort of hanging fog, or it was clear down below and obscure up above. Therefore, for that reason, I don't think I will make any finding of fault on that.

And in view of the concession of counsel for the Sandefjord, I have not gone in any detail into the fault of the Sandefjord, in other words, the general concession that she was at fault. It seemed to me the only issue left for me is the fault of the Polarusoil.

Mr. Deming: Will your Honor make a finding as to visibility?

The Court: My finding as to visibility is that it was a changing, fluid thing, and I don't put any great weight on anyone's estimate as to exactly how much it was, whether it was 399 feet or 400 feet. The general concensus of all involved was it was a ship's length, 400-odd feet; and the second mate of the Sandefjord said that he saw the lights

of the Polarusoil at about two ship's length. So I do not think it can be fixed with precision, and I don't think I am going to try to find it with precision. I would be doing the very thing which I think should not be done here. It was somewhere about a ship's length, and that is all this Court is able to find. We cannot average testimony.

Anything else?

(No response.)

LAWRENCE E. WALSH,
U. S. D. J.

Dated: New York, October 4, 1955.

Appendix A

Findings of Fact and Conclusions of Law of Trial Court

(Also printed at R. 230a)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

AD. 169-153

POLARUS STEAMSHIP CO., INC., as owner of the T/S POLARUSOIL,

Libelant,

against

The T/S SANDEFJORD, her engines, boilers, etc., and VIRIKS REDERI A/S (Haldor Virik, Manager),

Respondents.

AD. 182-237

VIRIKS REDERI A/S (Haldor Virik, Manager), as owner of the T/S SANDEFJORD,

Cross-Libelant,

against

T/S POLARUSOIL, her engines, boilers, etc., and POLARUS STEAMSHIP CO., INC.,

Cross-Respondent.

The above-entitled actions having come on for trial on the pleadings and proofs of the respective parties and due deliberation having been had thereon, the Court makes the following:

Appendix A

FINDINGS OF FACT

1. The T/S Polarusoil is a Liberty-type tank vessel built in 1943, of 7218 tons, 441 feet in length overall, 57 feet in beam 2500 horsepower, with steam reciprocating engines, single righthanded screw, manufactured by Bethlehem Steel Company, 19½-foot pitch, 18½-foot diameter; her normal speeds through the water under conditions of wind and sea like those on the date of collision are: full speed, 11½ knots; half speed, 6 knots; slow speed, slightly more than 3 knots, which was ample for steerageway.

2. The Polarusoil departed from Ambrose Lightship, New York, at 9:30 P. M., E. S. T., on July 10, 1951, for a voyage to Orange, Texas. She was in ballast, with drafts of 19 feet, 4 inches aft and 8 feet, 8 inches forward.

3. On departure from Ambrose Lightship the course of the Polarusoil was set at 183° true, her engines at full-ahead.

4. At 11:50 P. M. the course of the Polarusoil was changed to the left to 176° true, and at 12:30 A. M., July 11, 1951 the course of the vessel was changed to the right to 190° true.

5. As the Polarusoil approached Barnegat Lightship a condition of patchy fog was encountered. The wind was southerly, force 1 or 2, the current negligible.

6. At 1:43 A. M. the fog condition increased and the speed of the vessel's engines was reduced to half speed or 32 revolutions per minute. This propeller speed caused a speed of the vessel through the water of not more than 6 knots which was not excessive in view of the fog conditions which existed between 1:43 A. M. and the time of collision.

7. At 2:12 A. M. a fog signal was heard off the starboard bow of the Polarusoil and the master of the Polarusoil stopped the vessel's engines. The visibility at this time was not constant. It cannot be estimated with accuracy. It was probably somewhere about one ship's length.

8. Within a minute or two a second fog signal was heard on the starboard bow of the Polarusoil and the vessel's engines were placed at full astern.

9. The Polarusoil was dead in the water or going slightly astern when she was struck on the starboard bow by the Sandefjord.

10. The motorship Sandefjord, a tanker of Norwegian registry and flag, departed from Philadelphia on July 10, 1951 for New York.

11. The Sandefjord was built in 1950, has over-all length of 415 feet, beam of 55 feet, is 6272 tons deadweight and develops 4300 horsepower.

12. She is equipped with a navigational radar which was operating without incident on the night of July 10-11, 1951.

13. The Sandefjord passed Five Fathom Bank Lightship at 10:06 P. M., E. S. T. on July 10, 1951.

14. Her course was 030° true, her speed approximately 14 knots through the water.

15. At about 10:45 P. M. the Sandefjord encountered fog.

16. At midnight July 10-11, 1951, the speed of the Sandefjord was reduced to approximately 70-73 propeller revolutions per minute, giving a speed of about 12 knots through the water.

17. The master and mate of the Sandefjord observed on the vessel's radar an indication of another vessel ahead, estimated at 7 miles distance, slightly on the port bow of the Sandefjord.

18. The master of the Sandefjord continued to observe the other vessel on his radar screen.

19. No one on board the Sandefjord, however, made any effort to plot successive observations in order to determine the course and speed of the other vessel.

20. From his visual observation of the radar screen the master of the Sandefjord concluded that the other vessel was steering a course parallel and opposite to the course of the Sandefjord and would pass clear to the port side of the Sandefjord.

21. The master of the Sandefjord ordered the course of the vessel changed to the right to about 045° true.

22. Shortly thereafter the master of the Sandefjord observed the other vessel on his radar, close ahead, and ordered a further course change to the right to 055° true.

23. Fifteen to eighteen minutes before the collision those on board the Sandefjord heard a fog signal ahead. During the time intervening before the collision 4 or 5 more fog signals were heard. Yet the Sandefjord did not stop or reduce her speed.

24. When the Polarusoil was visually sighted close aboard the engines of the Sandefjord were placed full-astern and her rudder hard-right but she did not take off her way before she struck the Polarusoil.

25. The collision of the vessels occurred at between 2:14 and 2:15 A. M., July 11, 1951.

26. The collision occurred with the stem of the Sandefjord coming into contact with the starboard bow of the Polarusoil.

27. On collision of the vessels the stem of the Polarusoil was forced to the left by the impact of the collision.

28. At the time of collision the Sandefjord was moving ahead with substantial headway.

Conclusions of Law

1. The collision occurred in an area controlled by the International Rules for the Prevention of Collisions at Sea, 33 U. S. A. 61-141.

2. The Polarusoil fully carried out her duties under the International Rules and was not negligent or at fault in any respect:

a) Her avoiding action was prudently and proximately chosen and timed. She was not negligent in taking such action nor in not taking earlier, later or different action.

b) She maintained a good and efficient lookout.

c) Her officers and seamen were competent at all times promptly and efficiently handled the Polarusoil.

d) She was tight, staunch, strong and in all respects seaworthy prior to the collision.

3. The Sandefjord and those in charge of her navigation violated Article 16 of the International Rules for the

Appendix A

Prevention of Collisions at Sea (33 U. S. C. 92) in failing to proceed at a moderate speed in the fog conditions prevailing.

4. The Sandefjord and those in charge of her navigation violated Article 16 of the International Rules for the Prevention of Collisions at Sea (33 U. S. C. 92) in failing to stop her engines and to navigate with caution upon hearing apparently forward of her beam the fog signal of a vessel, the position of which was not ascertained.

5. That the proximate and direct cause of the collision was the failure of the Sandefjord to proceed at a moderate speed in the fog conditions prevailing, and in failing to stop her engines and to navigate with caution, upon hearing apparently forward of her beam the fog signal of a vessel the position of which was not ascertained.

6. Polarus Steamship Co., Inc. in cause A. 169-153 is entitled to recover from the T/S Sandefjord and Viriks Rederi A/S (Haldor Virik, Manager), its damages for reason of the injuries suffered by the SS Polarusoil, with interest and costs.

7. A decree should be entered in cause A. 182-237 dismissing the cross-libel of Viriks Rederi A/S (Haldor Virik, Manager) with prejudice and awarding costs in that action in favor of the Cross-Respondent Polarus Steamship Co., Inc.

LAWRENCE E. WALSH,
U. S. D. J.

Dated: Dec. 2, 1955.

Appendix A

Interlocutory Decree

(Also printed at R. 228a)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

AD. 169-153

POLARUS STEAMSHIP CO., INC., as owner of the T/S POLARUSOIL,

Libelant,

against

The T/S SANDEFJORD, her engines, boilers, etc., and VIRIKS REDERI A/S (Haldor Virik, Manager),

Respondents.

AD. 182-237

VIRIKS REDERI A/S (Haldor Virik, Manager), as owner of the T/S SANDEFJORD,

Cross-Libelant,

against

T/S POLARUSOIL, her engines, boilers, etc., and POLARUS STEAMSHIP CO., INC.,

Cross-Respondent.

The above entitled proceedings having duly come on to be heard in their regular order upon the pleadings and proofs of the respective parties hereto and having been argued and submitted by the proctors for the respective parties and the Court after due deliberation having filed

its opinion dated October 4, 1955 holding that the libelant Polarus Steamship Co., Inc. is entitled to an interlocutory decree with costs as against the T/S Sandefjord and Viriks Rederi A/S (Haldor Virik, Manager), and that the cross-libel of Viriks Rederi A/S (Haldor Virik, Manager) be dismissed with costs.

Now, on motion of Dow & Symmers, proctors for libelant, cross-respondent herein it is

ORDERED, ADJUDGED AND DECREED that the libelant Polarus Steamship Co., Inc. recover of and from the T/S Sandefjord and Viriks Rederi A/S (Haldor Virik, Manager) its damages herein with interest and costs, and it is further

ORDERED, ADJUDGED AND DECREED that the cross-libel of Viriks Rederi A/S (Haldor Virik, Manager) as against the T/S Polarusoil and Polarus Steamship Co., Inc. be and the same hereby is dismissed with costs as against the cross-libelant herein, and it is further

ORDERED that the matter be referred to Leslie Orps, Esq., Commissioner of New York, New York, to ascertain and compute the amount of libelant's damages and to report thereon to this Court with all convenient speed, and it is further

ORDERED that before acting under this decree said Commissioner shall take and file his oath of office with the Clerk of this Court.

Dated: New York, New York, December 2, 1955.

LAWRENCE E. WALSH,
U. S. D. J.

Appendix A

Opinion of the Court of Appeals

(Also printed at R. 239a)

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Nos. 365, 366—October Term, 1955

(Argued May 18, 1956 Decided August 20, 1956)

Docket Nos. 24002, 24003

POLARUS STEAMSHIP CO., INC., as owner of the T/S POLARUSOIL,

Libelant-Appellee,

against

The T/S SANDEFJORD, her engines, boilers, etc., and VIRIKS REDERI A/S (Haldor Virik, Manager),

Respondents-Appellants.

VIRIKS REDERI A/S (Haldor Virik, Manager) as owner of the T/S SANDEFJORD,

Cross-Libelant-Appellant,

against

T/S POLARUSOIL, her engines, boilers, etc., and POLARUSOIL STEAMSHIP CO., INC.,

Cross-Respondent-Appellee.

Before:

MEDINA, LUMBARD and WATERMAN,

Circuit Judges.

Appendix A

Appeals from a decree of the United States District Court for the Southern District of New York. LAWRENCE E. WALSH, *Judge*.

Respondents and cross-libelant appeal from a decree holding the T/S Sandefjord solely liable in a collision case in Admiralty. Opinion below not reported. Affirmed.

DOW & SYMMERS, New York City (Wilbur E. Dow, Jr. and WILLIAM A. WILSON, New York City, of Counsel), *for libelant-appellee*.

HAIGHT, GARDNER, POOR & HAVENS, New York City (MACDONALD DEMING and GORDON W. PAULSEN, New York City, of Counsel), *for cross-libelant-appellant*.

MEDINA, *Circuit Judge*:

At about two o'clock in the morning of July 11, 1951, two tankers, each over four hundred feet long, approaching one another in a fog from opposite directions, collided some forty odd miles at sea in the travelled highway off Barnegat Inlet on the New Jersey coast. The district judge found that one of the vessels, the Sandefjord, was solely to blame, and she appeals.

The Polarusoil, which had no radar, was bound for Texas on a southerly course and the Sandefjord was heading north from Philadelphia to New York. Except for the fog, which "was a changing, fluid thing," nothing interfered with navigation, as there was no sea or wind and the current was negligible.

The Sandefjord was equipped with navigational radar in good order and had a full speed under the prevailing conditions of about fourteen knots through the water. As the fog closed in, she reduced her speed only two knots. Despite hearing five or six fog signals from the Polarusoil,

and observing in the radar a vessel some miles ahead off her port bow, she maintained this excessive speed of twelve knots until she sighted the Polarusoil close aboard, when the Sandefjord ordered her engines in reverse. Her fault is clear and was conceded at the trial. She contends, however, that the Polarusoil was also to blame.

The Polarusoil's full speed was about twelve knots, but because of the fog she was proceeding at half speed, or about six knots through the water. The first warning to those aboard the Polarusoil that another vessel was close by was the fog whistle of the Sandefjord two minutes or thereabouts before she was hit. She stopped her engines immediately and, on hearing the second blast, she put her engines full astern. Then for the first time, the oncoming Sandefjord was visible to the Polarusoil. At the time of impact the Polarusoil "was dead in the water or going astern slowly."

There were a number of other factors, such as the stand-by order to the engine room of the Polarusoil and her trim, as well as the failure of those in command of the Sandefjord to make proper use of her radar. Indeed, what happened here demonstrates how radar may, when not properly used, increase the chances of collision. Had successive observations been plotted to determine the course and speed of the Polarusoil, which was plainly visible on the radar screen when about seven miles away, the ships would probably have passed one another in safety. But the master of the Sandefjord made no such calculations: he merely guessed that the Polarusoil was steering a course parallel to the coastline and moving to the left of the Sandefjord. While a matter of conjecture, it seems not unlikely that the Sandefjord would have proceeded more cautiously had she not been equipped with radar, which, under the circumstances, gave a false sense of security.

Appendix A

We cannot disturb the finding that the Sandefjord was solely to blame. There was no violation by the Polarusoil of Article 16 of the International Rules (33 U. S. C. Sec. 92) requiring vessels to proceed in foggy weather "at a moderate speed, having careful regard to the existing circumstances and conditions."

"Moderate" speed is undoubtedly less than full speed. *The Pennland*, S. D. N. Y., 23 Fed. 551; *The Alabama*, S. D. N. Y., 17 Fed. 847. But the term is a relative one, and precisely how much less the statute requires depends on the peculiar circumstances of each case. *The Pennsylvania*, 86 U. S. 125; *The Bayonne*, 2 Cir., 213 Fed. 216; *Quinette* v. *Bisso*, 5 Cir., 136 Fed. 825, cert. denied, 196 U. S. 606; *The State of Alabama, supra;* see also, Shope, Collision at Sea 341 n. 34 (1903).

True it is that there are statements that in congested harbor waters, and at times elsewhere, anything more than bare steerageway in the presence of fog may be too much. *The Martello*, 153 U. S. 64; *The Umbria*, 166 U. S. 404, 412, even more frequently, the applicable rule has been said to be that no vessel should be operated in a fog at a speed which is so fast that she cannot stop within the distance her helmsman can see ahead. *The Chattahoochee*, 173 U. S. 540, 548; *The Colorado*, 91 U. S. 692, quoting with approval, *The Batavia*, 40 Eng. L. & Eq. 25; *The Haven*, 2 Cir., 277 Fed. 957; *The City of Norfolk*, 4 Cir., 266 Fed. 641, cert. denied sub. nom. *Chesapeake S.S. Co. of Baltimore City* v. *Hand*, 253 U. S. 49; *The Northern Queen*, S. D. N. Y., 117 Fed. 906; *The Albatross*, D. Mass., 273 Fed. 285; *The Fjell*, E. D. Va., 257 Fed. 478; see also, Marsden, Collisions at Sea 340 (9th ed., Gibb, 1934).

But these are not rules of thumb to be applied willy-nilly. They are but glosses upon the basic rule requiring operation at a moderate speed, and, like it, they must be applied according to the particular circumstances of each

case. While there was some evidence that the range of visibility here was about a ship's length, some 400-odd feet, or, according to another witness, two ships' lengths, the trial judge very properly held that the distance could not be fixed with any accuracy. The purpose of the statute, spelled out in the "sight rule," is to require generally and not absolutely that a vessel proceed only at such speed that it can stop before striking another vessel which comes into the range of its vision. And here the Polarusoil was "stopped in the water and probably going astern very slowly at the time of the collision." Cf. *The Pemaquid*, 255 Fed. 709, rev'd on the facts, 1 Cir., 288 Fed. 666.

There is another feature of this case which is worthy of comment, in view of the congestion of the admiralty docket in the Southern District of New York. At the close of the evidence Judge Walsh dictated his decision and his findings, with some discussion of the evidence. This is good practice, especially in collision cases, where much depends upon a mental picture of the vessels as they approached one another and the conditions of time, fog, wind, current, and so on, in which the signals are given and the various maneuvers take place. Where the authorities cited in the trial briefs are studied during the trial and the evidence followed with some concentration, the trial judge is more likely than not to reach a just and sound result when the case is fresh in his mind and his impressions of the various witnesses are still vivid. Of course, complicated and difficult cases require further study; but in the average run-of-the-mill case, such as the one now before us, delay and the service of further briefs serve little purpose other than to multiply the amount of time and effort expended upon the case.

Affirmed.

Appendix A

Judgments of Court of Appeals

(Also printed at R. 244a, 246a)

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 20th day of August, one thousand nine hundred and fifty-six.

Present:

HON. HAROLD R. MEDINA,
HON. J. EDWARD LUMBARD,
HON. STERRY R. WATERMAN,
Circuit Judges.

POLARUS STEAMSHIP CO., INC., as owner of the T/S POLARUSOIL,

Libelant-Appellee,

against

The T/S SANDEFJORD, her engines, boilers, etc., and VIRIKS REDERI A/S (Haldor Virik, Manager),

Respondents-Appellants.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the decree of said District Court be and it hereby is affirmed; with costs to the appellee.

A. DANIEL FUSARO,
Clerk.

by RALPH C. CURCIO,
Deputy Clerk.

Appendix A

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 20th day of August, one thousand nine hundred and fifty-six.

Present:

HON. HAROLD R. MEDINA,
HON. J. EDWARD LUMBARD,
HON. STERRY R. WATERMAN,
Circuit Judges.

VIRIKS REDERI A/S (Haldor Virik, Manager) as owner of the T/S SANDEFJORD,

Cross-Libelant-Appellant,

against

T/S POLARUSOIL, her engines, boilers, etc., and POLARUSOIL STEAMSHIP CO., INC.,

Cross-Respondent-Appellee.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the decree of said District Court be and it hereby is affirmed; with costs to the appellee.

A. DANIEL FUSARO,
Clerk.

by RALPH C. CURCIO,
Deputy Clerk.

Appendix A

Opinion of Court of Appeals Denying Petition for Reargument

(Also printed at R. 255a)

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

—o—

POLARUS STEAMSHIP CO., INC., as owner of the T/S POLARUSOIL,

Libelant-Appellee,

against

The T/S SANDEFJORD, her engines, boilers, etc., and VIRIKS REDERI A/S (Haldor Virik, Manager),

Respondents-Appellants.

—o—

Before:

MEDINA, LUMBARD and WATERMAN, *Circuit Judges.*

On Petition for Rehearing.

HAIGHT, GARDNER, POOR & HAVENS, New York City (MACDONALD DEMING, GORDON W. PAULSEN and RICHARD G. ASHWORTH, New York City, of Counsel), for appellant Viriks Rederi A/S (Haldor Virik, Manager).

PER CURIAM.

Petition for rehearing denied.

HAROLD R. MEDINA,
J. EDWARD LUMBARD,
STERRY R. WATERMAN,
C. JJ.

Filed: September 17, 1956.

Appendix A

Order of Court of Appeals Denying Petition for Reargument

(Also printed at R. 256a)

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the seventeenth day of September, one thousand nine hundred and fifty-six.

Present:

HON. HAROLD R. MEDINA,
HON. J. EDWARD LUMBARD,
HON. STERRY R. WATERMAN,
Circuit Judges.

POLARUS STEAMSHIP CO., INC., as owner of the T/S POLARUSOIL,
Libelant-Appellee,

against

The T/S SANDEFJORD, her engines, boilers, etc., and VIRIKS REDERI A/S (Haldor Virik, Manager),
Respondents-Appellants.

VIRIKS REDERI A/S (Haldor Virik, Manager) as owner of the T/S SANDEFJORD,
Cross-Libelant-Appellant,

against

T/S POLARUSOIL, her engines, boilers, etc., and POLARUSOIL STEAMSHIP CO., INC.,
Cross-Respondent-Appellee.

Appendix A

A petition for a rehearing having been filed herein by counsel for the appellant Viriks Rederi A/S (Haldor Virik, Mgr.)

Upon consideration thereof, it is

ORDERED that said petition be and herein is denied.

s/ A. DANIEL FUSARO,
Clerk.

JAN 7 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 625

VIRIKS REDERI A/S (Haldor Virik, Manager), as owner of the T/S SANDEFJORD,
Petitioner,

against

POLARUS STEAMSHIP CO., INC., as owner of T/S POLARUSOIL,
Respondent.

BRIEF FOR THE RESPONDENT IN OPPOSITION

WILBUR E. DOW, JR.,
WILLIAM A. WILSON,
Counsel for Respondent
70 Pine Street
New York, N. Y.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

VIRIKS REDERI A/S (Haldor Virik, Manager), as owner of the T/S SANDEFJORD,
Petitioner,

against

POLARUS STEAMSHIP CO., INC., as owner of T/S POLARUSOIL,
Respondent.

No.

BRIEF FOR THE RESPONDENT IN OPPOSITION

Opinions Below

The oral opinion of the District Court, unreported, is printed in Appendix A to the petition.

The opinion of the Court of Appeals is reported at 236 F. 2d 270.

The Question Presented

The question presented is whether the Court of Appeals was correct in affirming the decree of the District Court that POLARUSOIL committed no violation of Article 16 of the International Rules when, after proceeding at half speed of not more than six knots in a condition of patchy fog, with her engines in "stand-by" condition so that these

could be reversed within a few seconds after receipt of an order from the bridge, she stopped her engines immediately on hearing a fog signal ahead, overcame her headway and probably gathered sternway before being struck with substantial impact by SANDEFJORD, which had maintained a speed of about 12 knots until visually sighting POLARUSOIL close aboard, the trial court having found that the collision would not have occurred had SANDEFJORD been obeying the law.

Statute Involved

The case involves Article 16 of the International Rules, 33 U. S. C. § 92(a):

> "(a) Every vessel, or seaplane when taxiing on the water, shall, in fog, mist, falling snow, heavy rainstorms or any other condition similarly restricting visibility, go at a moderate speed, having careful regard to the existing circumstances and conditions."

Statement

Collision between the POLARUSOIL and the SANDEFJORD occurred between 2:14 and 2:15 a.m., Eastern Standard Time on the morning of July 11, 1951, in the vicinity of Barnegat Lightship off the coast of New Jersey. The POLARUSOIL, southbound from Ambrose Lightship to Orange, Texas, was steering a southerly course. The SANDEFJORD was bound north from Philadelphia to New York.

The POLARUSOIL, a Liberty-type tankship built in 1943, has the following characteristics: gross tonnage—7218 tons; length overall, 441 feet; beam, 57 feet; horsepower, 2500; engines, steam, reciprocating.

The POLARUSOIL took departure from Ambrose Lightship, situated at the outermost point of New York Harbor, at 9:30 p.m. E. S. T. on July 10, 1951, and set a course of 183° true. At 11:50 p.m. course was altered left to 176° true.

As the vessel approached a position with Barnegat Lightship on the beam, she encountered patchy fog, and at 1:03 a.m., July 11, 1951, the vessel's engines were placed on stand-by. The effect of the "stand-by" order was to alert the engine room watch to possible engine orders that would require prompt attention. The condition of intermittent patchy fog with fair visibility continued until about 1:43 a.m., when the fog increased. At that time the engines of the vessel were placed at half-speed (32 revolutions per minute) and regulation fog signals were commenced. That propeller speed resulted in speed of the vessel through the water at not more than six knots.

Regulation fog signals were sounded continuously by the POLARUSOIL. At 2:12 a. m. a fog signal was heard off the starboard bow, and on hearing that signal the master of the POLARUSOIL immediately stopped his engines. Within a minute or two, a second fog signal was heard on the starboard bow, and at that time the engines of the POLARUSOIL were placed full astern. Shortly thereafter, the master of the POLARUSOIL and the mate on watch observed a vessel on the starboard bow and close aboard, moving on a course that would involve collision at a point near the bow of the POLARUSOIL. At that time the POLARUSOIL was dead in the water or going slightly astern.

The SANDEFJORD of Norwegian flag departed Philadelphia on the afternoon of July 10, 1951 bound for New York. A tank vessel built in 1950, the SANDEFJORD is 415 feet in length overall, has a beam of 55 feet. Her tonnage is 6,272 tons. Her motors can develop 4,300 horsepower.

She is equipped with a navigational radar which was operating without difficulty on the night of the collision.

On leaving Philadelphia the vessel passed Five Fathom Bank Lightship at 10:06 p. m., Eastern Standard Time, on a course of 030° true. Her speed was full ahead, approximately 14 knots through the water.

Visibility was good until about 11:54 p. m., at which time the vessel encountered fog. At midnight, speed was reduced to approximately 12 knots through the water.

The master came to the bridge of the SANDEFJORD at about 1:00 a. m., July 11, 1951. He observed on radar a vessel which later proved to be the POLARUSOIL. That vessel was then estimated to be about seven miles distant, slightly on the port bow of the SANDEFJORD. The master continued to watch the vessel on the radar screen but made no effort to plot successive observations in order to determine the course and speed of the other vessel, or possible danger of collision. From his visual observations, he concluded that the other vessel was steering a course parallel and opposite to the course of the SANDEFJORD and would pass clear to the port side of the SANDEFJORD.

Fog continued thick. The master, against the wishes of the mate, called the lookout from the bow and stationed him on the bridge. Shortly after observing the other vessel on radar the SANDEFJORD changed course 15° to the right to 045° true. Some time thereafter, seeing the other vessel close ahead on radar, the master ordered a further change of course of 10° to the right to 055° true.

Fifteen to eighteen minutes before collision the SANDEFJORD heard a fog signal ahead, and subsequently, until the time of collision, heard four or five more fog signals. She did not reduce speed.

The SANDEFJORD sighted the POLARUSOIL close aboard. Only at that time were the engines of the SANDEFJORD

placed full astern and the rudder hard right. But the way was not taken off the SANDEFJORD, and she struck the POLARUSOIL.

Collision occurred between 2:14 and 2:15 a. m., July 11, 1951, with the stem of the SANDEFJORD coming into contact with the starboard bow of the POLARUSOIL.

At the time of collision, the SANDEFJORD was moving ahead with substantial headway.

At the close of the testimony, proctors for the SANDEFJORD conceded the fault of that vessel and contended only that POLARUSOIL was also at fault. The trial court found POLARUSOIL free of fault and an interlocutory decree was entered in favor of POLARUSOIL owners against SANDEFJORD and her owners and dismissing the cross-libel of the SANDEFJORD owners.

The Court of Appeals held that there was no violation by POLARUSOIL of the provisions of Article 16 of the International Rules and refused to disturb the finding that SANDEFJORD was solely to blame, 236 F. 2d 270.

Argument

The judgment of the Court of Appeals affirming the decree of the District Court is supported by the evidence and is clearly correct. There is here presented no substantial legal question or conflict of decisions. Review by this Court is unwarranted.

The Court of Appeals held that there was no violation by the POLARUSOIL of Article 16 of the International Rules, which requires vessels to proceed in fog "at a moderate speed, having careful regard to the existing circumstances and conditions." The purpose of the statute, the Court said, "is to require generally and not absolutely that a vessel proceed only at such speed that it can stop before striking another vessel which comes into the range of its vision."

That statement of the rule is quite consistent with the expressions of this Court in *The Nacoochee*, 137 U. S. 330, and *The Umbria*, 166 U. S. 404. In the latter, Mr. Justice Brown said:

> "The general consensus of opinion in this country is to the effect that a steamer is bound to use only such precautions as will enable her to stop in time to avoid a collision, after the approaching Vessel comes in sight, *providing such approaching vessel is herself going at the moderate speed required by law.*" 166 at 417 (Emphasis ours.)

The significance of the rule is that the speed of a vessel in fog must be such as to permit her to overcome her headway before reaching the half-way point of the visible distance ahead, *The Chatahoochee*, 173 U. S. 540; *The Silver Palm*, C. C. A. 9, 94 F. 2d 754; Griffin, *The American Law of Collision*, § 117.

It is quite clear from these decisions that the test of "moderateness" as prescribed by Article 16 is not an absolute test, to be determined by speed alone, but is a test by which speed is considered only with reference to that vessel's ability to satisfy its obligation to stop within its share of the visible distance—always assuming that the other vessel is similarly obeying the law.

That is precisely what POLARUSOIL did. She had stopped her engines, had overcome her headway, and had commenced going astern before SANDEFJORD was sighted speeding through the fog. The District Judge recognized the POLARUSOIL had fully satisfied its obligation to stop within its proportionate share of its range of visibility. He said in his opinion:

> "I think that the POLARUSOIL stopped her engines when she heard the first fog signal of the SANDEFJORD. I don't think her speed up to that point had been excessive. And, finally, I think that even if there was any excessive speed up to that point that in fact she was stopped in the water and probably going astern very slowly at the time of the collision; that regardless of how it came about or when she stopped her engines or when she reversed them, if the SANDEFJORD had been obeying the law as the POLARUSOIL had every reason to expect her to do, there would have been no collision."

Article 16 of the International Rules does not impose on a vessel navigating in fog any obligation more severe than that which POLARUSOIL recognized and satisfied.

Petitioner refers the Court to *Lie* v. *San Francisco & Portland S.S. Co.*, 243 U. S. 291; *The Pemaquid*, 288 F. 666; *The Silver Palm*, 94 F. 2d 754; and *Johnston-Warren Lines* v. *U. S.*, 196 F. 2d 689, all apparently in support of the argument that POLARUSOIL could not properly be found to have fulfilled the moderate speed requirement simply because, as the District Court found and as the Court of Appeals observed in its opinion, she was "stopped in the water and probably going astern very slowly at the time of the collision."

But these decisions do not support the principle to which petitioner refers them. Granted, in each of those cases a vessel was held at fault, even though she had overcome her headway before the collision. But in no case had the vessel's headway been overcome *before* that vessel had crossed more than her allowable portion of visibility. Consequently, the assignment of fault in each of those decisions

depended, not on success or failure of the vessel in question to overcome her headway, but on failure of the vessel to stop before collision had been rendered inevitable by that vessel's advance beyond the permissible point defined in *The Nacoochee* and *The Umbria*. As this Court observed in *Lie* v. *San Francisco & Portland S.S. Co.*, even though the vessel had been stopped before the time of collision, "the evil had been done and the collision rendered inevitable," 243 U. S. 298. That principle was stated quite clearly by the Court of Appeals for the 9th Circuit in *The Silver Palm:*

> "However, she could well be dead in the water and still at fault *if she had crossed more than her* allowable portion of visibility," (italics added).

The District Court and the Court of Appeals recognized several factors of importance in the satisfaction by POLARUSOIL of her statutory obligation.

The draft of the vessel was such that backing power was available at maximum efficiency. The readings were 8 feet, 8 inches forward and 19 feet, 4 inches aft, giving the vessel more than 10 feet of drag. This condition of trim, the master testified, made backing performance more efficient, the reason being that the propeller was fully immersed in the water and thus capable of delivering the most effective thrust.

Also, the engine room watch had been alerted by the "stand-by" order from the bridge, and had warmed up the reversing mechanism of the main engines so that the engines could be reversed in "a few seconds". In that condition, the engines were turned over in reverse promptly on receipt of the full-astern order that was given at about 2:13, and were actually going at full speed astern seconds after that order was received.

The POLARUSOIL was equipped with a special large-pitch* propeller, which gave the vessel greater backing power. Because of this, the engines actually began to move astern three to five seconds after receipt of the backing order, and reached full speed astern in a matter of half a minute after reversal. The engineer on watch at the time of collision testified that on receiving the stop order at 2:12 he actually stopped, or "froze," the propeller, rather than permitting it to coast to rest under inertia, and actually had the engines going full astern in "20, maybe 30 seconds" after receiving the order from the bridge to do so. He was able to tell that the vessel had sternway before collision by the action of the engine, which he could hear, see and feel. The master testified that he was able to tell that his ship had started to gather sternway when the SANDEFJORD was sighted, by the fact that he could see the wash from the propeller "backing up to around No. 4 hatch."

The District Judge stated in his opinion that he was "very much impressed by the fact that one ship was apparently under control; the other ship, apparently, was not." And on the strength of the testimony introduced he concluded that

> ". . . the fact, I think, was that when this thing was occurring, the master of the POLARUSOIL had his ship dead in the water or, I think, probably going astern when he was hit, and the other master did not; he ran into the POLARUSOIL."

Proctors for the SANDEFJORD contend that the speed of the POLARUSOIL, as found by the Court, was excessive as

*The "pitch" of a propeller, measured in feet and inches and dependent on the set-angle of its blades, indicates the distance through which the vessel would be moved ahead by one complete revolution of the propeller if the propeller were permitted to rotate in a solid medium and thus lose no efficiency (i.e., suffer no "slip"). The pitch of the standard Liberty propeller is 16 feet, 6 inches; the pitch of the POLARUSOIL propeller was 19 feet, 6 inches.

a matter of law. Principal reliance appears to be placed on the decision in *The Martello,* 153 U. S. 64, which involved a collision between a steam vessel and a sailing vessel at the very mouth of New York Harbor, apparently in or close to the channel line. As the Court rightly pointed out there, a speed of six knots made by a steam vessel at the entrance to New York Harbor in 1887 could well be considered immoderate under the statute, particularly in view of the likelihood of meeting concentrated shipping at the point. There were no factors to suggest that the steamer was in any way competent to stop her headway and reverse her direction, or to keep out of the way of the sailing vessel. In fact, the steamer failed even to check her speed on hearing the fog horn of the sailing vessel.

Ability of a steamer to stop and reverse is one of the "existing circumstances and conditions" recognized by the courts as applicable to the language of Article 16 of the International Rules. Addison Brown, J., said in *The State of Alabama,* 17 F. 847:

> "Moderate speed, as often stated, is not a fixed rate for all vessels or for all occasions. It has reference to all the circumstances which affect the ability of the steamer to keep out of the way, not merely, therefore, to the circumstances external to the ship, but also to the power and ordinary full speed of the steamer herself; because a fast vessel with powerful engines can be handled more quickly, stop sooner, back faster, and get out of the way quicker, going at a given rate, than a steamer of less power going at the same rate."

In *The Normandie,* 43 F. 151, the circumstances found to affect a steamer's ability to avoid collision were said to include "the full speed of the ship herself, her appliances for rapid manoeuvering, and the amount of her steam power

kept in reserve, as affecting her ability to stop quickly after hearing fog signals."

In none of the case authorities referred to by petitioner does there appear to be a situation in which the "existing circumstances and conditions" in any way served to justify the speed of the offending steamer, which was subsequently condemned as excessive. On the contrary, the excessive speed in each instance appears to have actually contributed to the collision. In the case of the POLARUSOIL, the trial court pointed specifically to the several factors which, aside from the finding that the vessel was dead in the water or even had some sternway before collision, led him to conclude that the speed of the vessel was in all respects moderate within the meaning of the statute.

Conclusion

For the foregoing reasons, it is respectfully submitted that Petition for Writ of Certiorari should be denied.

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Office - Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1956

No. 625

VIRIKS REDERI A/S (Haldor Virik, Manager), as owner of the T/S SANDEFJORD,

Petitioner,

against

POLARUS STEAMSHIP CO., INC., as owner of T/S POLARUSOIL,

Respondent.

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION TO A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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This reply brief is made necessary by the fact that respondent, in its brief in opposition to the petition, has based its attempted distinction of the authorities cited in the petition on an allegation which the Opinion and Findings of Fact of the Trial Court does *not* support.

At page 7 of its brief respondent concedes the force of the authorities cited in the petition but argues that they do not apply on the basis of respondent's statement that the Polarusoil "had stopped her engines, had overcome her headway, and had commenced going astern before SANDEFJORD was sighted speeding through the fog" (Respondent's Brief, p. 6; substantially the same misstatement is made at page 3 of respondent's brief).

The Trial Court made no such finding. The Trial Court found that "the Polarusoil was dead in the water or going

slightly astern *when she was struck* on the starboard bow by the Sandefjord" (Finding #9, Petition, Appendix A, p. 21). Similarly, in the Trial Court's Opinion it is stated only that the Polarusoil "was stopped in the water and probably going astern very slowly *at the time of the collision;* * * *" (Opinion of the Trial Court, Petition, Appendix A, p. 16). (Emphasis supplied.)

It follows, we respectfully submit, that respondent's attempted distinction falls. Consequently, as impliedly conceded by respondent at page 7 of its brief, the authorities cited in the petition are applicable.

CONCLUSION

It is respectfully submitted that the foregoing considerations warrant allowance of the writ sought by petitioner.

Dated: New York, N. Y.,
January 10, 1957.

Respectfully submitted,

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